

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

UNITED STATES OF AMERICA,

Plaintiff,

vs.

No. CR 05-1849 JH

DANA JARVIS, et al.,

Defendants.

**NOTICE REGARDING MISSING AND UNDESIGNATED DISCOVERY,
ILLEGIBLE PRODUCTIONS
&
MOTION TO PRODUCE SAME**

Defendant, Dana Jarvis, through counsels of record Gary C. Mitchell and Jody Neal-Post, and on behalf of co-Defendants David Reid, Greg Hill, Bill Jones and Dennis Wilson, and per advisement by Richard S. Demarest, J.D. as discovery coordinator for all defense counsel [Doc. No. 1368], hereby provides notice to the Court and the United States of missing, undesignated, and illegible documentary discovery, as well as seeks production and or correction of all identified deficiencies. The Defendants state as follows:

In its Third Order Setting Trial Date and Case Schedule [Doc. No. 1368 at para. 7], the Court ordered that

The government shall provide a single set of all discovery required to be produced under this Order to Richard S. Demarest, who will act as discovery coordinator on behalf of all defense counsel.

The government has, since September 9, 2005, periodically produced discovery memorialized in thirty-five (35) separate release cover letters. Discovery produced was not serial in nature, i.e., some releases were duplicitous and not all exhibits were provided in complete form in a single release or in order in consecutive releases. Prior to and in anticipation of the Status Conference conducted on August 6, 2008, produced discovery was joined to create uniform and complete access to verifiably complete exhibits and document sets.

Notwithstanding the joining of separately produced exhibit and document pieces, a significant number of exhibit and document sets required "spacer" or "place-holder" pages. The spacer, or place-holder pages represent pages inadvertently omitted in discovery disclosures or pages purposely withheld by the government under privilege or other legal basis, but without the government's withholding or basis for withholding having been disclosed. Other exhibits are missing in their entirety, and if intentionally withheld, no notice of withholding was given the defense, nor was justification provided by the government for exhibit and or document withholding.

Additionally, note is made that the discovery release of 3.956 to 3.1298 (February 8, 2008) comprises pages of such illegibility as to be unusable by the Defendants and, if presented as an exhibit at trial, similarly illegible to a jury.

An example of specific difficulties is as follows, from Mr. Jarvis' investigator Mr. Mares' efforts to utilize the already produced discovery to work on wiretap issues:

"In reviewing the documents that Dana presented and other copies he had, it was noted that "Bates" numbers had been issued to the same document page several times. For example;

a. The last page (page 45) of the March 3, 2005 affidavit was marked

- Bates #61,
- Bates #170,
- Bates #489,
- Bates #531,
- Bates #777,
- Bates #1029, and
- Bates #1073.

b. The first page of the March, 2003 affidavit had on its face

- Sticker "Exhibit A" - Bates #126 (first release),
- Stickers "Exhibit A" & "Exhibit B" - Bates #290 (second release),
- Stickers "Exhibit A," "Exhibit B," & "Exhibit C" – Bates 487 (third release),
- Stickers "Exhibit A," "Exhibit B," "Exhibit C," & "Exhibit D" – Bates #733 (fourth release), and
- Stickers "Exhibit A," "Exhibit B," "Exhibit C," "Exhibit D," & "Exhibit E" – Bates #1029 (fifth release).

This occurred because every time that the government provided discovery for the Affidavits (listed in #1 above), each earlier issued Affidavit was added to the end [of] the latest document and new Bates numbers were issued to the same page of the previously provided documents. The problem being that it appears to be more discovery than it actually is but because it exists, each document has to be reviewed to insure it is the same as previously issued."

Mares Notes, August 2008.

In the August 6, 2008 Status Conference counsel for Dana Jarvis, Gary C. Mitchell, provided AUSA James R. W. Braun with an informal listing of pages determined as missing or of undesignated status. This Notice & Request formalizes the listing with a description of exhibits either not provided in their entirety [Attachment A] or in an incomplete form where inadvertent omission or purposeful withholding is present [Attachment B].

With this Notice and companion request, Defendants Dana Jarvis, David Reid, Greg Hill, Bill Jones and Dennis Wilson seek that the government:

1. Produce missing exhibits in their entirety and in legible form or, where appropriate, to designate the authority upon which such exhibit is being withheld from Defendants;
2. Produce missing exhibit pages in legible form or, where appropriate, to designate the authority upon which such exhibit page is being withheld from Defendants;
3. Produce legible copies of pages 3.991, 3.1001 to 3.1009, 3.1011, 3.1017 to 3.1021, 3.1023 to 3.1026, 3.1028 to 3.1029, 3.1075, 3.1110, 3.1117 to 3.1121, 3.1125, 3.1128 to 3.1132, 3.1135 to 3.1136, 3.1145, 3.1148, 3.1154 to 3.1166;
4. Clarify discovery issues set forth in Attachment C.
5. Produce all documentary discovery not listed in Attachment D, a matrix listing discovery received by Defendants to date.

As with prior discovery releases, transmission of the missing documents and pages and replacements of illegible pages should be made to the office of Scott Davidson, 1011 Lomas

Boulevard NW, Albuquerque, NM 87102, who will in turn transmit the documents to Mr. Richard S. Demarest.

Respectfully submitted by:

Electronically Filed
/s/
August 27 2008

By _____
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Electronically Filed
/s/
August 27, 2008

By _____
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I hereby certify that a true and correct copy of
the foregoing pleading was delivered to
counsel of record via the CM/ECF system
August 27, 2008.

Electronically Filed

Jody Neal-Post

